IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

WP(C).No. 4113 of 2007(S)

OA.122/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. **UNION OF INDIA REPRESENTED BY THE SECRETARY,MINISTRY OF EVIRONMENT & FORESTS, NEW DELHI.**

2. **INSTITUTE OF WOOD SCIENCE & TECHNOLOGY, P.O.MALLESWARAM,BANGALORE-3, REPRESENTED BY THE DIRECTOR.**

3. **INSTITUTE OF FOREST GENETICS & TREE BREEDING,R.S.PURAM P.O., COIMBATORE-2,REPRESENTED BY THE DIRECTOR.**

4. **INDIAN COUNCIL OF FORESTRY RESEARCH & EDUCATION, P.O.NEW FOREST,DEHRADUN,U.P., REPRESENTED BY THE SECRFETARY.**

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SR.PANEL

RESPONDENT:

SRI.M.J.ANTONY,
LOWER DIVISION CLERK,
GENETICS & TREE BREEDING DIVISION,
INSITUTE OF FOREST GENETICS & TREE BREEDING,
COIMBATORE-2.

BY ADV. SRI.M.J.ANTONY-(PARTY IN PERSON)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF ORDER DTD. 27/09/2005 OF CAT ERNAKULAM BENCH IN O.A.NO.122/2003 FILED BY RESPONDENT.**
EXT.P2:	**COPY OF O.A.122/2003 FILED BY THE RESPONDENT.**
EXT.P3:	**COPY OF REPLY STATEMENT FILED ON BEHALF OF PETITIONERS HEREIN.**
EXT.P4:	**COPY OF REJOINDER FILED BY THE RESPONDENT.**
EXT.P5:	**COPY OF ADDL.REPLY STATEMENT FILED ON BEHALF OF PETITIONERS.**
EXT.P6:	**COPY OF LETTER DTD. 28/01/1984 OF THE PETITIONER.**
EXT.P7:	**COPY OF TERMINATION ORDER DTD. 2/04/1984.**
EXT.P8:	**COPY OF LETTER NO.CTR-I/2-23/2006 DTD. 10/04/2006.**
EXT.P9:	**COPY OF ORDER NO.CTR-I/2-23/2006 DTD. 24/04/2006.**
EXT.P10:	**COPY OF ORDER NO.54-183/2003-ICFRE DTD.1/2/2006.**
EXT.P11:	**COPY OF JUDGMENT OF HON'BLE SUPREME COURT IN WP(C) NO.886/88.**
EXT.P12:	**COPY OF WP(C) 886/88 FILED BEFORE THE HON'BLE SUPREME COURT OF INDIA.**
EXT.P13:	**COPY OF LETER NO.39-10/2001 ICFRE DTD. 10/09/2001.**
EXT.P14:	**COPY OF ORDER NO.1-28/90-ISWT/314 DTD. 18/02/1992.**
EXT.P15:	**COPY OF LETTER NO.54-1/2005-ICFRE DTD. 10/08/2007.**

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RESPONDENT'S EXHIBITS:

EXT.R1: **COPY OF THE CAT JUDGMENT DTD. 3/07/2007.**

EXT.R2: **COPY OF THE LETTER DTD. 1/02/2006 OF SECRETARY, ICFRE.**

EXT.R3: **COPY OF THE SWAMY'S BOOK – RULE 14 COUNTING HALF OF SERVIE PAID FROM CONTINGENCIES WITH REGULAR SERVICE.**

EXT.R4: **COPY OF THE LETTER DTD. 21/03/2001 OF SECRETARY ICFRE STATING THAT TWO ADDITIONAL INCREMENTS WERE GRANTED TO ALL THE STAFF MEMBERS ABSORBED IN THE COUNCIL W.E. FROM 1/06/1991.**

/TRUE COPY/

P.A.TO JUDGE

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.4113 of 2007-S

Judgment

Balakrishnan Nair, J.

The petitioners were the respondents in OA No.122/03. The respondent herein was the applicant in that OA, a copy of which is produced as Ext.P2. The respondent commenced his service as a Casual Labourer engaged on daily wage basis under the second petitioner. Seeking regularisation in service, he along with another, filed OA No.556/90 before the CAT on 30.06.1990. During the pendency of that OA, he was terminated from service on 01.10.1990. The OA was finally allowed as per Annexure A2 order dated 23.07.1991, produced along with Ext.P2, directing the respondents therein to regularise the applicants against suitable Group D posts forthwith, if there are vacancies or by creating two posts for them. It was also ordered that till they are so absorbed, they should be treated to be notionally holding such posts and all the benefits admissible to regular Group D employees shall be paid to them. In obedience to the said direction, he was regularised in a Group D post

by order dated 03.08.1993 with effect from 23.07.1991. The applicant wanted his contingent service prior to regularisation, to be reckoned for pensionary benefits. He also claimed two additional increments, which were granted to all the employees, who were in service as on 31.05.1991. His representations in this regard were rejected by the competent authorities. Therefore, the present OA Ext.P2 was filed, mainly seeking the aforementioned two reliefs. The petitioners herein resisted the OA by filing Ext.P3 reply statement. The applicant filed Ext.P4 rejoinder. The petitioners herein filed additional reply statement.

2. After hearing both sides, the CAT allowed both the claims of the applicant. Based on the materials on record, the CAT found that the applicant was having continuous service as contingent employee with artificial breaks and therefore, 50% of the said service qualifies for pension in terms of Rule 14 of the CCS (Pension) Rules read with Decision No.2(d) of the Central Government. The Tribunal also said that the Judgment in OA No.556/90 does not specify the date with effect from which, the applicant should be treated as a Group D employee. According to the applicant, it should be with effect from the

date of filing of the OA i.e., 30.06.1990. But, according to the petitioners herein, it can only be given effect from the date of the Judgment i.e, 23.07.1991. The Tribunal took the view that since the contingent service of the applicant ended on 01.10.1990, his service in the Group D post should be treated as having commenced from the said date.

3. The writ petitioners attack the above two findings in favour of the respondent herein. In support of the attack against the direction to count 50% of the contingent service for pensionary benefits, the petitioners have produced some new materials to show that the respondent was out of service for more than two years between 1984 and 1986. So, his contingent service is not continuous with only artificial breaks and therefore, the finding of the Tribunal on that point has to be reversed, it is contended. But, we find that the said point was not raised in the reply statement and the Tribunal cannot be found fault with for not having considered that point, which was never raised before it. Therefore, we are not inclined to interfere with the impugned Judgment based on the new materials produced before this Court. But the petitioners' rights, if any, to move the Tribunal by filing a review, if so advised, will not be affected by this Judgment.

4. Regarding the grant of two increments, we feel that the view taken by the Tribunal is just and proper. The respondent is not responsible for the delay in disposal of the OA filed by him in 1990. It is a well settled principle of law that no one shall be prejudiced by the act of Court. He filed the OA on 30.06.1990. If it was heard without delay, there was possibility of the OA being disposed of before 31.05.1991. In that event, even according to the petitioners, the applicant would have got the benefit of the increment. So, normally, the Judgment in OA No.556/90 could have been given effect from the date of filing of the OA. But the Tribunal took a different view and as mentioned earlier, felt that the date of termination of his contingent service should be taken as the date of commencement of his regular service. The said view taken on the facts of this case cannot be said to be arbitrary or irrational. It is only the applicant, who is aggrieved by the fixation of that date, as his claim for regularisation w.e.f. 30.06.1990 in the Group D post was not accepted. In view of the above position, the order of the Tribunal that the respondent is entitled to get two increments and therefore, the amount already paid to him should not be recovered, also cannot be interfered with. In the result, the Writ Petition fails

and it is dismissed without prejudice to the rights, if any, of the petitioners to move the CAT in review, if so advised, regarding the first point, we have dealt with in this Writ Petition concerning the reckoning of 50% of the casual service for grant of pensionary benefits.

K.BALAKRISHNAN NAIR,JUDGE

03.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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